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FISCAL IMPACT STATEMENT

LS 7108

BILL NUMBER: HB 1008

NOTE PREPARED: Jan 11, 2006

BILL AMENDED:

SUBJECT: Public-Private Agreements for Transportation.

FIRST AUTHOR: Rep. Borror

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL

IMPACT: State & Local

X DEDICATED

X FEDERAL

Summary of Legislation: This bill has the following provisions.

Public-Private Agreements: It amends the current laws concerning toll roads and tollways and adds new provisions to authorize the Indiana Finance Authority (Authority or IFA) to enter into public-private agreements with private entities (operators) concerning:

- (1) toll road projects; and
- (2) tollway projects, intermodal facilities, roads, airports, transit facilities and equipment, and other transportation facilities and infrastructure.

It provides that the public-private agreements may be for any combination of the planning, acquisition, construction, improvement, extension, operation, repair, maintenance, and financing of projects. It provides that a public-private agreement is subject to the approval of the Governor after review by the Budget Committee.

It establishes procedures for selection of operators by the Authority.

Toll Rate Setting: It permits the Authority to establish user fees and tolls, including maximum tolls and user fees and criteria for the adjustment of those maximums.

Moral Obligation: It provides that, with the approval of the Budget Director after review by the Budget Committee, a public-private agreement may include a moral obligation of the state to pay certain costs incurred under the agreement.

Electronic Toll Collection Systems: It provides that a public-private agreement may include provisions concerning electronic toll collection systems and photo- or video-based toll collection enforcement systems.

User Fees and Enforcement Procedures: It authorizes the Authority to adopt emergency rules concerning user fees under a public-private agreement and enforcement procedures and assessments for failure to pay required tolls, including electronic and photo- or video-based collection enforcement.

Northwest Indiana Regional Development Authority Payments: It provides that certain payments required to be made to the Northwest Indiana Regional Development Authority (NIRDA) upon the sale or lease of the Indiana Toll Road may be made from the state General Fund or the proceeds of a public-private agreement (current law provides for payment from the state General Fund).

Property Tax Exemption: It provides that property leased or acquired by an operator for a public-private project is exempt from property taxes.

Income Tax: It provides that an operator's income from a public-private agreement is subject to taxation in the same manner as income received by other private entities.

Use of Revenues from Toll Road Revenues: It provides that revenues from a public-private agreement with respect to a toll road shall be deposited in the Toll Road Fund and used to:

- (1) retire certain outstanding bonds and pay amounts owed by the authority with respect to a public-private agreement;
- (2) fund projects identified in the Indiana Department of Transportation (INDOT) long-range comprehensive transportation plan;
- (3) fund roads, bridges, public transit facilities and equipment, airports, and other projects designed to facilitate the movement of people, goods, services, and information in the counties that are traversed by a toll road project and the cities and towns in those counties; and
- (4) fund distributions to the NIRDA or fund other projects authorized to be undertaken by NIRDA under existing law.

Use of Tollway Revenues: It provides for the distribution of revenues from a public-private agreement with respect to a tollway to the Major Moves Construction Fund, to the State Highway Fund, to INDOT for use on other projects designated by INDOT, or to the operator, the Authority, or INDOT for debt reduction.

Technical and Conformance: It makes technical corrections and conforming amendments.

Retroactive Authorization: It validates any action taken with respect to public-private agreements entered into by the Authority before the effective date of this bill that would have been valid under this bill.

State Board of Accounts Audit: It requires the State Board of Accounts to audit the accounts and records concerning the operation of each toll road project by the Authority for each state fiscal year beginning after June 30, 1996, and ending before July 1, 2006.

Effective Date: Upon passage.

Explanation of State Expenditures: *Public-Private Agreements:* The bill establishes public-private agreements for toll road projects (including the existing Indiana Toll Road) and for future projects concerning

tollway projects, intermodal facilities, roads, airports, transit facilities and equipment, and other transportation facilities and infrastructure (other projects). The fiscal impact of these public-private agreements will depend on the circumstance of each proposed project. Positive fiscal impact will occur if the lease of a state asset garners more money than the long-term net revenues generated by the asset. Also, if the state transfers risk to another party for which the state would have to pay a premium or that has high probability for additional costs, the state could benefit from these public-private agreements. If the state accepts funds today in place of future revenues, the state loses the future income and the flexibility to accept new projects using that income.

Background on the IFA: The Indiana Finance Authority (IFA) is a body politic and corporate, not a state agency, but an independent instrumentality exercising essential public functions.

Under current law, the IFA may construct, maintain, repair, police, and operate toll road projects in Indiana. In order to secure funds for these functions, the IFA may issue toll road revenue bonds of the state. Toll road revenue bonds do not constitute a debt of the state or of any political subdivision and are payable solely from the funds pledged for their payment or from an allocation of money from the Rural Transportation Road Fund, which is administered by the IFA.

The IFA is allowed, under current law, to contract with or lease to INDOT for construction, reconstruction, improvements, maintenance or repairs, or operation of toll projects or toll bridges. The statute also allows for the IFA to determine under IC 8-23-7 that a toll road project constructed or operated by the authority should become a part of the system of state highways free of tolls or become a tollway.

Background on Public-Private Agreements for Toll Road Projects: The bill requires the IFA to issue a request for proposal that must be published in accordance with IC 5-3-1. The IFA may negotiate with the responsible offerors in confidence and after receiving final offers make a preliminary selection or terminate the process. If a preliminary selection is made, the IFA must hold a public hearing and provide a written explanation of the basis for the selection at least 7 days before the public hearing. After these procedures are complete, the IFA may select the preliminary offeror as the operator.

The public-private agreement must be reviewed by the State Budget Committee and approved by the Governor prior to its execution. The public-private agreement may not exceed 99 years. It must contain either provisions for lease, franchise, or license of the toll road project or for management agreements or contracts to operate the toll road project. All real property and improvements must be owned by the IFA. The agreement must allow for monitoring maintenance practices and provide for corrective action. The agreement must establish the basis on which user fees may be collected by the operator. Also required are provisions that require compliance with state and federal laws and local ordinances, the grounds for termination, and the procedures for amendment. In addition, some of the other provisions that may be inserted in the agreement include review and approval of the operator's plans for development and operation, inspection of construction or improvements, the filing of appropriate financial statements by the operator, and financing obligations of the operator and the IFA.

The bill allows the operator to finance its obligation by issuing debt, equity, or other securities, entering into sale and leaseback transactions, and securing financing with a pledge of, security interest in, or lien on any user fees charged and collected for use of the toll road.

For construction, the operator would not have to comply with state laws concerning public works or public works by state agencies, but would have to comply with provisions concerning minority business enterprises and women's business enterprises and, if specified in the public-private agreement, award contracts to Indiana

businesses.

The bill would allow the IFA to fix user fees and establish maximum amounts and provide for increases and decreases based on indices, methodologies, or other factors selected by IFA.

The bill allows the IFA, the operator, and the Indiana State Police (ISP) to enter into an agreement to provide law enforcement and between the IFA and ISP related to the costs incurred to provide law enforcement.

Request For Proposal - The IFA issued a request for proposal (RFP) for a long-term lease and concession of the Indiana Toll Road through financial advisors Goldman, Sachs & Co. The bill will make actions taken before the effective date of the act legal and valid that would have been valid under this bill. The RFP has the following significant dates:

September 28, 2005	Proposal offered
October 26, 2005	Responses due
January 23, 2006	Selection announced

From the RFP, the investment highlights of the Indiana Toll Road include substantial commercial traffic and lack of competing direct routes, anticipated small impact of proposed toll increases on traffic demand, strong toll revenue growth rates, 48-year operating history, limited future capital expenditures, modernization potential, and the economic environment.

The RFP indicates that the bidder will be evaluated on technical and financial capability. The bidder is required to include a cover page; cover letter; table of contents; executive summary; team information; technical capabilities addressing operations and maintenance expertise, customer service, and safety; financial capabilities including financial capacity to pay purchase price and maintain toll road and ability to raise financing; and legal provisions. Qualified bidders signed confidentiality agreements with IFA for further due diligence.

Background on the Indiana Toll Road - The IFA leases the toll road to INDOT to operate and maintain the road in an efficient and economical manner, as allowed under current law. INDOT created a special Toll Road District to keep its work on the Toll Road separate from other state functions. The Indiana East-West Toll Road Project (Toll Road Project) - an accounting entity - pays rent to the IFA to meet its debt service. Once operating expenses, major expense fund requirements, and base rent are paid, any excess income is paid to IFA as additional rent. Revenues of the Toll Road Project are derived from tolls collected, rent payments from concessionaires, and investment income. Operating expenses are general administration, toll collection, road operations, various services including patrol services, major expense repairs and renovations, and depreciation expense. The following table shows operating results from the Toll Road Project from FY 1999 through FY 2005.

Operating Revenues and Expenses Indiana East-West Toll Road Project (In Millions)							
	FY 1999^a	FY 2000^a	FY 2001^a	FY 2002^a	FY 2003^a	FY 2004^b	FY 2005^b
Operating Revenue							
Toll Receipts	\$81.6	\$84.8	\$81.3	\$82.5	\$82.0	\$85.1	\$88.0
Concessionaire Rent	5.3	7.0	6.5	5.9	6.5	7.0	7.0
Other	<u>1.1</u>	<u>1.1</u>	<u>0.7</u>	<u>0.9</u>	<u>0.5</u>	<u>0.6</u>	<u>0.8</u>
Total Revenue	<u>88.0</u>	<u>92.9</u>	<u>88.5</u>	<u>89.3</u>	<u>89.0</u>	<u>92.7</u>	<u>95.8</u>
Operating Expenses							
Depreciation	10.1	10.4	11.1	3.4	3.1	3.1	3.6
Other Expenses	44.7	40.8	34.3	64.9	70.0	57.3	67.9
Total Operating Expenses	<u>54.8</u>	<u>51.2</u>	<u>45.4</u>	<u>68.3</u>	<u>73.1</u>	<u>60.4</u>	<u>71.5</u>
Nonoperating Income (Expense)	<u>(14.0)</u>	<u>(10.0)</u>	<u>(8.1)</u>	<u>(12.6)</u>	<u>(15.0)</u>	<u>(13.9)</u>	<u>(12.6)</u>
Net Income (Loss)	<u>\$19.2</u>	<u>\$31.7</u>	<u>\$35.0</u>	<u>\$8.4</u>	<u>\$0.9</u>	<u>\$18.4</u>	<u>\$11.7</u>
^a State of Indiana Comprehensive Annual Financial Report for the fiscal year. ^b Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.							

The cash flow statement provides information about changes in cash from the operating, financing, and investing activities of the entity. The total cash flow between FY 1999 and FY 2005 is \$48.9 M, with operating activity providing positive cash flow each year. In five years of this seven-year period, the overall cash flow has been negative due to financing and investing activity.

Cash Flow Statement Indiana East-West Toll Road Project (In Millions)							
Cash Flow from ...	FY 1999^a	FY 2000^a	FY 2001^a	FY 2002^a	FY 2003^a	FY 2004^b	FY 2005^b
Operating Activity	\$36.1	\$53.6	\$52.0	\$26.6	\$20.2	\$35.8	\$28.4
Financing Activity	(38.2)	(55.8)	(52.7)	(25.2)	(33.3)	(45.7)	(47.1)
Investing Activity	(12.9)	88.5	(34.1)	84.8	(27.7)	(6.9)	2.5
Total	(\$15.0)	\$86.3	(\$34.8)	86.2	(40.8)	(16.8)	(16.2)
^a State of Indiana Comprehensive Annual Financial Report for the fiscal year. ^b Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.							

The Annual Report indicates that 91% of the Toll Road Project's lane miles were rated in good or better condition and 100% of the Toll Road Project's bridges were rated in good or better condition. None of the bridges were rated as substandard. The INDOT standard for road quality is 85% of the roads in good or better condition and for bridges the standard quality is that less than 1% of the bridges are rated as substandard.

Net Present Value - The bill would allow the IFA to receive a one-time payment in the present instead of collecting a stream of net income over a period of time up to 99 years. (The RFP calls for a lease period of at least 50 years, although the bill allows a lease period of up to 99 years). Positive fiscal impact would occur if the present value of the Toll Road lease is over and above the present value of the stream of net revenues that would otherwise have been received. Reasons that an offeror would pay more than the stream of cash flows include (1) the offeror can operate the Toll Road Project at a lower cost than the state, (2) the offeror can charge fees that are higher than the state would have charged, or (3) the offeror is willing to pay a premium for the rights to operate the Toll Road.

Conversely, the offeror may offer less because the costs to the offeror are higher than they are for the state. For example, the offeror's costs will include applicable taxes (see *Explanation of State Revenues*) and a profit for shareholders. These net cash flows will be discounted by the average investment rate of the offeror which could be higher or lower than the state's rate of investment.

The state recently proposed rules to raise the Toll Road tolls which will result in more revenue for the Toll Road Project. To the extent that costs remain constant, the future net income of the Toll Road Project could increase. However, the toll increase is based on the need for improvements to the Toll Road Project which will increase construction costs.

The calculation of the net present value of the project to the state and to an offeror requires management and engineering expertise to determine future costs for maintenance and improvements. A minimum acceptable value for the Toll Road Project has not been calculated at this time.

City of Chicago Skyway - The City of Chicago recently leased a major toll bridge connector to the city, the Skyway, for \$1.8 B for 99 years to an Australian firm, Macquarie Bank. Although the Skyway meets up with the Toll Road Project, there are a number of differences that would not make the Skyway deal a model for the amount that may be paid to lease the Toll Road Project. First, the Skyway is 8 miles long with 1 bridge, whereas the Toll Road Project is 157 miles long with 331 bridges. Second, the City of Chicago completed \$300 M in upgrades prior to leasing, and the Toll Road Project will require a \$226 M road expansion, according to the IFA. Third, the Skyway toll revenue is reported by the IFA at \$40 M versus \$96 M in FY 2005 for the Toll Road Project. In revenue per mile, the Skyway earns \$5.0 M and the Toll Road Project earns \$611,000.

Background on Public-Private Agreements for Tollway Projects: The bill allows the IFA to develop, finance, or operate (or any combination) one or more public-private agreement projects related to a tollway or other projects that charge user fees. Other projects as defined in the bill include intermodal facilities, roads, airports, transit facilities and equipment, and other transportation facilities and infrastructure. A project constructed or operated under this article is part of the state highway system. The public-private agreement may not exceed 99 years including extensions.

The bill establishes a competitive proposal procedure for the IFA to enter into public-private agreements. The process requires the IFA to hold a public hearing before awarding a public-private agreement. The Budget Committee reviews the IFA determination of the successful offeror as operator and the Governor accepts the

determination and designates the successful offeror.

The offeror must enter into a public-private agreement with the IFA. The IFA may decide the appropriate provisions for a particular qualifying project, including delivery of performance and payment of bonds or other security; review of plans; inspection of construction or improvements; maintenance of insurance, monitoring of maintenance; filing appropriate financial statements; compensation or payments to the operator; compensation or payments to the IFA; date and terms of termination; reversion of the qualifying project to the IFA; and rights and remedies of the IFA if the operator defaults. The bill allows the IFA to enter into preliminary agreements that do not include complete price, cost, payment, or revenue sharing.

The IFA will fix the maximum amount of user fees and provide for increases or decreases of the maximum amount. The public-private agreement may authorize the operator to adjust the user fees and to charge and collect user fees through manual and nonmanual methods.

The bill allows the IFA to make grants or loans from amounts received from the federal government or a state or local agency. It also provides for the IFA to take over qualifying projects at termination or expiration of the public-private agreement without pledging the full faith and credit of the state, any political subdivision, or the IFA.

The bill provides for the IFA and INDOT to enter into memoranda of understanding (MOU) with respect to the implementation and administration of a public-private agreement. The MOU may provide that INDOT has responsibility and administers and oversees the public-private agreement.

The plans and specifications for a public-private agreement project must comply with INDOT's standards for other projects of a similar nature and any other applicable state or federal standards. However, a construction project is not required to comply with state public works statutes or statutes concerning purchases of supplies and materials.

IFA or INDOT may support private entity applications to obtain federal, state, or local credit assistance for qualifying projects, or take actions to obtain federal, state, or local assistance for a qualifying project. The IFA may issue bonds, debt, other securities, or other financing. The bonds or notes issued do not have to comply with certain requirements already in statute concerning approval by the commissioner of INDOT and the Budget Agency, the weighted average life of the project, and the average weighted life of the bond.

Law enforcement officers of the state and of local jurisdictions have the same powers and jurisdiction within the limits of a qualifying project as they have in their respective areas of jurisdiction. The IFA may enter into arrangements with the ISP related to costs incurred providing law enforcement assistance under this article.

Northwest Indiana Regional Development Authority Payments: Under current law, the IFA is required to make payments between \$5.0 M and \$10.0 M in CY 2006 and CY 2007 to the Northwest Indiana Regional Development Authority (NIRDA) in equal quarterly payments. If the Toll Road is leased or sold before January 1, 2008, the State Treasurer is required to make a payment of \$20.0 M minus any payment already made. The payment would come from the state General Fund. The bill would allow such a payment to be made from the proceeds of a lease agreement or the state General Fund. This provision could reduce expenses to the state General Fund arising from the lease or sale of the Toll Road.

Background: As of December 2005, the IFA approved a \$10 M allocation to the NIRDA in 2006 from

the Toll Road General Reserve Fund. Therefore, the maximum remaining liability would be \$10 M.

Moral Obligation: For tollway projects undertaken with public-private agreements, the IFA may issue bonds or debt for a qualifying project. The funds may be mixed and aggregated with funds provided by an operator. The bill stipulates that the issue does not constitute a debt of the state or a pledge of the faith and credit of the state or any political subdivision. However, the bill also allows for a moral obligation to be created with the review of the Budget Committee and the approval of the budget director. If the project does not provide revenues sufficient to repay bonds or notes, the General Assembly could be asked to make appropriations from the state General Fund.

Revenue Bonds - To date, bonds issued by the IFA have been revenue bonds, secured by the revenues generated from tolls. However, the lease agreement between IFA and INDOT dated September 1, 1985, states:

If there still remains a deficit in Revenues....then the Department within 30 days will promptly report and request approval of the Transportation Coordinating Board and the State Budget Agency for the submission of a bill either as a part of or as an amendment to the budget bill providing an appropriation by the General Assembly to the Department of funds for the purpose of and in amounts sufficient to pay the obligations of the Department under this Lease...

It is understood that this lease language and other language in the covenants of the revenue bonds that the revenue bonds could represent a moral obligation of the state. The state has risk to the extent that the Toll Road Project would fail to earn sufficient revenue to pay the debt service and a default on outstanding bonds would affect the state's bond rating. Any additional bonds that the IFA may issue for road construction projects may establish the same sort of moral obligation and expose the state to this risk of financial responsibility.

User Fees and Enforcement Procedures: The bill exempts IFA from some of the requirements of rule making procedures including public notices and hearings, a one-year completion time, small business provisions, and approval from the Attorney General and the Governor. Also, the bill makes rules adopted by the IFA expire at the date set by the IFA. It is expected that making emergency rules will incur minimal additional administrative costs for the IFA.

Background on Enforcement Procedures: By establishing enforcement procedures for nonpayment of tolls, the bill clears the way for use of electronic toll collection devices. Currently, the Toll Road operates as a closed barrier system between miles 1 and 23, and as a closed ticket toll collection system between miles 24 and 153. The Toll Road has computerized collection equipment and has begun to establish infrastructure to move towards an electronic system. Using electronic technology could reduce the number of toll collectors needed and reduce maintenance and operation costs for toll collection stations.

Indiana Department of Transportation: The bill allows INDOT to adopt rules to establish an electronic tolling program and to include restrictions on the use of one or more lanes on any part of a tollway. The rules may be adopted under the provisions for adopting emergency rules to implement public-private agreements. Administrative costs for INDOT could minimally increase as a result.

State Board of Accounts Audit: The bill requires the State Board of Accounts to audit or cause to be audited the IFA's accounts, books, and records at the IFA's expense. There should be no increased cost to the state for the audit.

Background on State Board of Accounts Audit: The annual report of the East-West Toll Road Project is audited by Crowe Chizek and Company LLC who issues an opinion on the financial statements. Additionally, the Toll Road and Toll Bridge financial statements appear in the Enterprise Fund section of the *State of Indiana Comprehensive Annual Financial Report (CAFR)* and the Transportation Finance Authority Bonds financial information is in the Internal Service Funds section. The CAFR is audited by the State Board of Accounts.

Explanation of State Revenues: *Use of Revenues from Toll Road Revenues:* The bill establishes the Toll Road Fund consisting primarily of money received from an operator under a public-private agreement but may include appropriations of the General Assembly. The money in the fund is allocated to one of three accounts within the Fund. The Bond Retirement Account contains the amount necessary to repay, defease, or otherwise retire bonds selected by the IFA; the Administration Account is the amount necessary to pay amounts owed by IFA for performance of a public-private agreement, and the Eligible Project Account is the remainder. Of money allocated to Eligible Project Account, 34% must be distributed to INDOT, the Northwest Indiana Regional Development Authority, and eligible counties for eligible projects. Eligible counties are defined as those counties through which the Toll Road Project traverses. There are no data available to indicate how much money may be available for these projects.

Background on Bonds Series Outstanding: Money received from a public-private agreement would be used to pay off bonds selected by IFA. The total outstanding balance on bonds issued for the Toll Road Project is currently valued at \$198.7 M. IFA estimates that the penalties for early payments of bonds at about \$4.0 M. The balance and payment schedule of the outstanding revenue bonds issued by IFA for the Toll Road Project are as follows.

Bond Issue	Long-term Liability June 30, 2004 (In Millions)	Long-term Liability June 30, 2005 (In Millions)
Series 1985	\$26.2	\$26.2
Series 1987	\$43.2	\$43.3
Series 1993	\$18.0	\$9.3
Series 1996	<u>\$121.6</u>	<u>\$119.9</u>
Total	\$209.0	\$198.7
<i>Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.</i>		

Revenue Bond Repayment Schedule Year-Ending June 30, (In Millions)							
	2006	2007	2008	2009	2010	2011-2015	2016
Principal	\$13.7	\$14.5	\$15.4	\$16.3	\$17.1	\$101.2	\$26.2
Interest	<u>11.3</u>	<u>10.5</u>	<u>9.5</u>	<u>8.5</u>	<u>7.7</u>	<u>22.5</u>	<u>0.8</u>
Total	\$25.0	\$25.0	\$24.9	\$24.8	\$24.8	\$123.7	\$27.0
<i>Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004.</i>							

Use of Tollway Revenues: Revenues received from a public-private agreement for a tollway project, over and above amounts repaying loans, grants, or reimbursement of services are distributed by the IFA to the Major Moves Construction Fund, to INDOT for deposit in the State Highway Fund, to INDOT for projects designated by INDOT, or to the operator or IFA for debt reduction. There are no data to indicate how much money may be generated from yet unspecified public-private agreements for tollway projects.

Major Moves Construction Fund Background: The bill establishes the Major Moves Construction Fund which will be administered by the IFA to fund public-private agreement projects, other projects in the INDOT transportation plan, and other highway facility and transportation infrastructure as determined by INDOT. The money in the fund includes distributions from the Toll Road Fund, payments made to the IFA or INDOT from public-private agreements for the existing toll road or new projects, appropriations to the fund, gifts, grants, loans, bond proceeds, interest, premiums, or other earnings.

Indiana Department of Transportation: The bill enables INDOT to increase the revenues it receives by allowing INDOT to fix fees or charges in addition to tolls and by expanding the services to which these tolls, fees, or charges may be applied. In association with establishing an electronic tolling program, the bill allows INDOT to fix fees for the initiation, administration, and maintenance of customer accounts, late payment procedures, and for equipment used by customers in connection with electronic tolling. It allows INDOT to retain and use tolls, fees, or charges. The bill also expands INDOT's ability to fix tolls for tollways giving it powers similar to IFA for setting tolls on the Toll Road.

Tax Status for Toll Road Projects: The bill is not expected to change the revenues received from property tax related to property that is part of a toll road project. However, increases could occur from increases in Sales and Use Tax on tangible personal property that is purchased by the operator. Since the Toll Road is operated by a state agency, purchases are not currently subject to retail Sales or Use Tax. Based on past financial data, the IFA estimates about \$3.4 M average a year in FY 2006 and FY 2007 in purchases that would be subject to the state's 6% Sales Tax. This would result in about \$200,000 dollars of additional revenue in those years. (Information is not available for other purchases for construction of infrastructure since some of these materials may be exempt from Sales Tax, similar to manufacturer's purchases of manufacturing inputs.)

Tax Status for Tollway Projects: The bill is not expected to affect revenue received from property, Sales, or Use Taxes on property, or purchases that become part of the structure or land of a tollway. Governmental units do not pay Sales or Use Tax. Under current law, any property involved in a tollway is not subject to property tax since the operation of the tollway is considered an essential government function. Under the bill, the

operator of a public-private agreement would not be required to pay any property tax on property or property interest acquired by the operator. Also, the purchase of any tangible personal property for incorporation or improvement of a structure or facility or land of a tollway is exempt from the Sales and Use Taxes.

Income Tax: The bill provides that an operator's income from a public-private agreement is subject to taxation in the same manner as income received by other private entities. There are no data available to indicate how much would be collected.

Class C Infractions: Violation of an enforcement rule promulgated by the IFA or INDOT is a Class C infraction. Also, the bill creates a Class C infraction for a person who passes a toll gate without paying. If additional court cases occur, revenue to the state General Fund may increase if infraction judgments and court fees are collected. The maximum judgment for a Class C infraction is \$500, which is deposited in the state General Fund. If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Northwest Indiana Regional Development Authority (NIRDA) Payments:* Under current law, the NIRDA will receive up to \$20 M from the IFA. The funds received may be used for any purpose of the NIRDA. As of December 2005, the IFA approved a \$10 M allocation to the NIRDA in 2006 from the Toll Road General Reserve Fund. This bill guarantees if the Toll Road Project is sold or leased, the remaining liability would be covered from the state General Fund or the Toll Road Fund. The maximum remaining liability is \$10 M.

Use of Revenues from Toll Road Revenues: Each year, the Northwest Indiana Regional Development Authority may submit a request to IFA for a distribution from the Eligible Projects Account of the Toll Road Fund for projects to be carried out during the fiscal year. The IFA will make distributions to the Development Authority Fund.

Also, eligible political subdivisions may submit requests to INDOT for a distribution of funds from the Eligible Projects Account. INDOT may approve, modify and approve, or reject a request. The IFA will make distributions to the fiscal officer of the city, town, or county for an eligible project. There are no data to indicate how much money may be available for local units.

Class C Infractions: If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Transportation; Indiana State Police; State Board of Accounts.

Local Agencies Affected: Trial courts; Local law enforcement agencies; Angola; Elkhart; Mishawaka; South

Bend; LaPorte; Valparaiso; Portage; Gary; Goshen; Chesterton; East Chicago; Hammond; Hobart; Lake County; Porter County; LaPorte County; St. Joseph County; Elkhart County; LaGrange County; Steuben County.

Information Sources: *Indiana East-West Toll Road Project Annual Report, June 30, 2005 and 2004; State of Indiana Comprehensive Annual Financial Report, FY 1999-FY 2003; Indiana Toll Road, Request for Toll Road Concessionaire Proposal; Ryan Kitchell, Director Public Finance, 317-233-4334.*

Fiscal Analyst: Karen Firestone, 317-234-2106.